IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

1) CIVIL APPLICATION NO. 5486 OF 2005.
IN
FIRST APPEAL ST.NO.17773 OF 2003.

2) CIVIL APPLICATION NO. 5488 OF 2005
IN
FIRST APPEAL ST.NO. 17761 OF 2003.

AND

3) CIVIL APPLICATION NO. 5490 OF 2005
IN
FIRST APPEAL ST.NO. 17815 OF 2003.

The State of Maharashtra. ... Applicant.
(In all the C.As.)

Versus.

Shivram Mahadu Patil
(since deceased through LRs.)
Gajanan Shivram Patil & others. ... Respondents.
(In all the C.As.)

Shri A.A.Kumbhakoni, Associate Advocate General with Shri Y.M.Nakhawa, A.G.P. for the Applicant in all the Civil Applications.

Shri S.V.Gavand for the Respondents in all the Civil Applications.

CORAM : ABHAY S.OKA, J.

DATED : 8th March, 2007.

P.C.:

1. On 23rd February 2007 when these Applications were placed before this Court, my attention was invited to the averments made in the Application and in particular in paragraph 3 thereof. It is stated that for a period of four months the office of the District Government Pleader, Raigad could not apply for certified

copy of the impugned Judgment and Award as no funds were made available to the said office for applying for certified copy of the Judgment and Award. In view of this statement, this Court requested the learned Associate Advocate General to appear in these Applications. Accordingly the learned Associate Advocate General has appeared and tendered an affidavit of Shri B.K.Raskar, Under Secretary, Law and Judiciary Department. In paragraphs 7 and 8 of the said affidavit, it is stated thus:

> "7. However, it is submitted that so far as the Land Acquisition matters are concerned, there is a specific provision made in the Rules for the Conduct of Legal Affairs of the Government, 1984. I say and submit that Rule 139 of these Rules prescribes when the appeal is to be filed in the Hon'ble High Court, the charges in respect of purchase of Court Fee Stamps, professional fees of the concerned Government Pleader and all other charges are to be borne by the concerned Collector or the Land Acquisition Officer. I say that such bills shall not be sent to the Law and Judiciary Department for scrutiny or counter signature, as the case may be. Hereto annexed and marked as Exhibit B is the copy of extract

of Rule 139 of Rules for the Conduct of Legal Affairs of the Government, 1984.

8. The present case is squarely covered under the Rule 139 of the said Rules of the Rules for the Conduct of the Legal Affairs of the Government, 1984 since the Appeal was presented by the State Government on behalf of other acquiring body, challenging the award for getting the certified copy of the Judgment passed by the learned trial Court. The required coping charges are to be borne by the concerned acquiring body as per the provisions of Rule 139(4) of the above Rules. Although sufficient funds were available with the Office of the District Government Pleader from the grants allotted by the Principal Secretary and Remembrancer of Legal Affairs, still for technical grounds such funds cannot be used by the District Government Pleader to get the certified copy of Judgment and Award in the land acquisition proceedings, on account of specific provisions of Rule 139(4). In the present case the acquiring body CIDCO has not deposited amount of court fees in time and therefore, delay has been caused. In case, exemption is granted from deposit of any such

> amount of copying charges, then there will be no question of making deposit of such amount either from the funds of the acquiring body or that of the Principal Secretary and Remembrancer of Legal Affairs. I further say that so far as the expenses to be incurred for getting certified copy of Judgment, Decree or Order in other cases i.e. excluding cases having Land Acquisition Act and other documents are concerned, the Law and Judiciary Department places a grant at the disposal of District Government Pleader which is known as Professional and Special Services Grants and it is expected that the concerned Law Officer should incur expenses from this grant to purchase the certified copies of Judgment, Decree or Order etc. in civil matters in the subordinate judiciary."

In the said affidavit references have been made to the Criminal Manual as well as High Court Appellate Side Rules, 1960. The Bombay High Court Appellate Side Rules specifically provide that when an application is made by the State Government and Union of India for certified copies of the Judgment or decree, deposit of requisite amount along with an application for certified copies is not required to be made. It is further provided that

where a certified copy is applied for the State Government or any officer of the Government of Maharashtra on behalf of the State Government, the certified copy shall be furnished free of cost. There are similar provisions in the Criminal Manual for grant of certified copies free of cost when Public Prosecutor or the Police Prosecutor applies for certified copy of the Judgment for the purpose of filing appeal or revision application.

2. What is set out in the affidavit is the necessity of making a similar provision in the Rules in the Civil Manual in so far as Civil and District Courts are concerned. In paragraph 11, it is stated as under:

> "11. I further say that in many matters, the delay is caused mainly on account of delay in deposit/payment of charges of certified copies of Judgment and Award and on this count, interference of this Hon'ble Court is very much essential for exemption of deposit/payment of charges for getting the certified copies of Judgment and Award of the Trial Courts in all matters."

3. In a large number of cases this Court has noticed that the Applications for condonation of delay

are required to be filed as there is a delay in applying for certified copies of the impugned Judgment and Orders on the part of the State Government or its Officers. In large number of cases lack of availability of funds is a ground which is set out as an explanation for delay in applying for certified copies. The present Appeals arise out of Awards made under section 18 of the Land Acquisition Act, 1894. As a result of delay in preferring appeals, even the applications for stay could not come up before this court in a reasonable time as a result the interest at the rate of 15% per annum under section 28 of the Land Acquisition Act, 1894 kept on running. These are factors which should be considered for making suitable amendment to the relevant Rules. It is for the State Government to initiate appropriate steps in this behalf.

4. After having heard the learned Associate Advocate General and Shri Gavand for the Respondents, a case for condonation of delay is made out. Delay in preferring the Appeal is condoned.

Judge.